

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOSHUA CHATWIN,

Plaintiff,

VS .

Case No. 2:14-cv-00375

DRAPER CITY; OFFICER J. PATTERSON, in his individual and official capacity; OFFICER DAVID HARRIS, in his individual and official capacity; OFFICER HEATHER BAUGH, in her individual and official capacity; and JOHN DOES 1-10,

Judge Dale A. Kimball

Defendants.

VIDEOTAPED DEPOSITION OF: KIRK TORGENSEN

Taken: June 17, 2016

Reported by: Kelly Sommerville, RPR

***Intermountain Court Reporters
Murray, UT 84107
(801) 263-1396***



1 MS. MARCY: And, Blake, let me just add
2 something. Mr. Torgensen -- I'm not his counsel,
3 obviously. I'm just here to make objections. But he
4 has decided to not follow my advice and he will talk
5 about the incident, but I still want to make the
6 objections on the record, that obviously you can ask
7 those questions again, I'll have a standing objection
8 that they are argumentative, prejudicial, not relevant,
9 and asked to annoy, embarrass and oppress for the
10 following next series of questions about the incident
11 in July of 2015.

12 Q. (BY MR. HAMILTON) Sir, I'd like to talk to
13 you a little bit then about that incident in July of
14 2015. You seemed to want to correct me to the fact
15 that it was your ex-wife.

16 A. It was not my ex-wife.

17 Q. Are you currently married to Linda
18 Torgensen?

19 A. I am.

20 Q. Okay. And it's true that in July 17, 2015,
21 that officers, Salem City Police officers, were called
22 to a domestic violence call?

23 A. They were called, yes.

24 Q. And they were called specifically to 15
25 South 100 East, Salem, which is Sonya -- I want to make

1 sure I say her name right -- Shayna Phillips'
2 residence, correct?

3 A. Correct.

4 Q. And at that point in time, your wife, Linda
5 Torgensen, was there with her daughter, true?

6 A. Her daughter was not -- she was in the
7 house but she wasn't there.

8 Q. Okay. So Shayna and her husband were in
9 the home, correct?

10 A. They were.

11 Q. And you and your wife had an altercation in
12 the -- another portion of the house, true?

13 A. We did not have an altercation, no.

14 Q. You were upset that your wife had not been
15 returning your calls during the day, correct?

16 A. What happened is, if you want to know what
17 happened is, we were discussing -- we were having a
18 discussion. She said, "Let me see my phone." And I
19 flipped her phone towards her, and it hit her in the
20 forehead. And when the police were called, she told
21 the policeman right there on the spot, because I heard
22 it, "This was a complete accident. He didn't intend
23 for this to happen. I didn't see the phone."

24 And it was her daughter who ended up
25 calling the police. She wasn't there. She wasn't

1 involved, and that was what happened. And my wife
2 subsequently told the prosecutor that very thing.

3 Q. Sir, you didn't make, obviously, the call
4 to the police, correct?

5 A. The daughter did.

6 Q. Okay. And when she called, she called the
7 police, stating that you, as the suspect, were
8 intoxicated and the victim was bleeding, true?

9 A. I have no idea what she told the police.

10 Q. Okay. But you would agree with me that
11 your wife at that point in time was bleeding from her
12 head?

13 A. The phone accidentally hit her in the
14 forehead, and yeah, it did draw some blood.

15 Q. And when the officers arrived, you were
16 standing outside near the driveway of the home?

17 A. I believe so.

18 Q. Do you recall making -- or Officer Cobbley
19 making contact with you?

20 A. I do.

21 Q. At that point in time, were you aware of
22 the fact that there -- could you -- could you hear
23 yelling going on in the home? Commotion?

24 A. No. I know that my wife was upset that her
25 daughter had called the police. She was trying to

1 explain things, that it wasn't -- it was an accident,
2 that there was no altercation. That, I recall.

3 Q. So your recollection is that your wife
4 said -- was making statements that this was a complete
5 accident?

6 A. She told the police officer that this was
7 an accident.

8 Q. Did you hear what else your wife told the
9 police that day?

10 MS. MARCY: Objection. Vague.

11 THE WITNESS: I don't know.

12 Q. (BY MR. HAMILTON) Did you hear her tell
13 the police that you had a drinking problem?

14 A. I didn't hear her tell them that, no. I
15 think she wrote that in her report.

16 Q. And that you were spiraling out of control?

17 A. I, at that point in my life, was probably
18 having a few too many drinks. It's true.

19 Q. And were you aware that she also informed
20 the police that your drinking was affecting or causing
21 problems in your life?

22 A. I'm sure she could have very well said
23 that, because we were both having some -- I was having
24 a tough time with my situation in life at that point.

25 Q. When you talk about your situation, you're

1 MS. MARCY: Objection. Calls for
2 speculation.

3 THE WITNESS: There is no granddaughter,
4 and no, the grandson was nowhere around when this
5 happened.

6 Q. (BY MR. HAMILTON) A 20-month-old child
7 came into the room. Do you recall that?

8 A. After -- clear after the incident, yes.

9 Q. And was upset?

10 A. Don't know.

11 Q. You didn't hear him crying?

12 A. I didn't hear him crying.

13 Q. Didn't notice that he was upset?

14 A. I've answered the question.

15 Q. Okay. Again, are you refusing to answer
16 that question?

17 MS. MARCY: Objection. Asked and answered.
18 He already answered it.

19 Q. (BY MR. HAMILTON) Do you recall telling
20 the officers that "I didn't mean to do that. I didn't
21 mean to do that"?

22 A. I explained to them what happened; that it
23 was a complete accident; that I flipped the phone.
24 There was no intent for the phone to hit her. That's
25 exactly what my wife told them.

1 Q. Do you recall that once you were booked
2 into jail, that you were informed that your wife had a
3 restraining order?

4 A. My wife did not have a restraining order.

5 Q. That Shayna had gotten a straining order --
6 a restraining order?

7 A. Yes.

8 Q. And that you were to have no contact?

9 A. With Shayna, yes.

10 Q. Do you recall that you immediately, upon
11 release of jail, went back to Shayna's home and knocked
12 on the door?

13 A. What happened was my car was there. My
14 brother picked me up. My brother took me back to the
15 home. My brother knocked on the door to inquire about
16 my wife, and she called the cops again. That's the
17 truth.

18 Q. It's true that you were arrested on that
19 occasion?

20 A. I was again, yes.

21 Q. And the police officers explained the fact
22 that you had been informed that there was -- that you
23 were to have no contact?

24 A. I didn't have contact. My brother did.

25 Q. It's true, at this incident, that you told

1 the police officers that you had given your life to law
2 enforcement?

3 A. I don't recall.

4 Q. 28 years that you had instructed at the
5 academy?

6 A. You know what, I'm proud of my years of
7 supporting law enforcement. I always will support law
8 enforcement. It's part of my heart. It's who I am.

9 Q. It's true that you --

10 A. So I may have said that.

11 Q. It's true that you tried to talk yourself
12 out of being arrested by telling the officers who you
13 were --

14 A. That is not true.

15 Q. -- and what you had done?

16 A. That is not true. I explained to them it
17 was an accident. There was absolutely nothing
18 happened. My wife reiterated that. And the young
19 officer said that he had no discretion. His chief said
20 that in these circumstances, he had to do what he had
21 to do.

22 Q. It's true that you specifically told that
23 officer that it would be okay if he removed the cuffs?
24 That you would prefer --

25 A. That is not true.

1 Q. That you would prefer that he remove the
2 cuffs?

3 A. He asked me, "Kent, do you want me to
4 remove the cuffs? Are we going to have an issue?"

5 And I said, "Of course we're not going to
6 have an issue." That's what happened.

7 Q. It's true that the officer told you that he
8 couldn't remove the cuffs from you?

9 A. No.

10 Q. Your testimony is that the officer --

11 A. I don't recall, Counsel.

12 Q. You don't recall being --

13 A. I don't recall whether --

14 Q. You don't recall being cuffed?

15 A. I do recall being cuffed, yes.

16 Q. And you were cuffed in the back, right?

17 A. I do recall being cuffed.

18 Q. And the officer told you that he'd move
19 your cuffs to the front, true?

20 A. I have no problem with the officer who was
21 doing his job.

22 Q. And you, at that point, told the officer,
23 well, you would prefer if he'd just remove the cuffs
24 completely?

25 MS. MARCY: Objection. Asked and answered,

1 and as well as the standing objections.

2 Q. (BY MR. HAMILTON) That's what you told the
3 officer, true?

4 A. I don't recall.

5 Q. And the officer told you that he couldn't
6 remove the cuffs?

7 A. I don't recall.

8 Q. And this was after you had told the officer
9 that you had given your whole life to law enforcement
10 and taught for 28 years?

11 A. I don't recall.

12 Q. Sir, let's jump back to your report,
13 Exhibit-1, and talk about the factors that we were
14 talking about just a minute ago. I'm on page 4. You
15 have it in front of you?

16 A. I have it in front of me.

17 Q. Okay. If you look to that second full
18 paragraph, under opinions, basis and reasons for
19 opinions, the very bottom of that paragraph, about four
20 lines up from the bottom, there's a sentence that says
21 that your critique of the 2010 Draper City policy is
22 that "It does not provide any factors to consider." Do
23 you see that?

24 A. I do see that.

25 Q. And we've gone through and we've talked

1 Q. You would agree with me, though, that there
2 was another chief deputy attorney for a period of time
3 while you were the chief deputy?

4 A. I stated yes.

5 Q. And that person for a term -- for a time
6 was John Swallow, correct?

7 A. For a year, yes.

8 Q. So for a year, he was the chief deputy
9 attorney general with you; is that right?

10 A. True.

11 Q. And prior to John Swallow being the other
12 dual chief deputy attorney general, who was that chief
13 deputy attorney general?

14 A. Ray Hintze.

15 Q. And how long was he the chief deputy
16 attorney general?

17 A. From 2001.

18 Q. So from 2001 to the time that John Swallow
19 became the chief deputy attorney general, Ray Hintze
20 was your dual chief deputy attorney general?

21 A. The chain of command that Mark Shurtleff
22 had in place was that he had a direct line to me, and
23 then it cropped off to Ray Hintze is the way I remember
24 it, but he did provide pretty much a dual role at that
25 time.

1 Q. Had the same title as you?

2 A. I think he did, yes.

3 Q. So it's true he would actually be -- and he
4 probably had responsibilities for supervising certain
5 individuals, correct?

6 A. That's fair.

7 Q. And how many attorneys did he supervise?

8 A. I don't know. I can't -- I don't know the
9 numbers.

10 Q. But it's true that you actually -- you
11 didn't actually supervise all 210 attorneys, correct?

12 A. I -- I felt like my responsibility was, and
13 I think Ray felt the same, we were responsible for all
14 of the attorneys in the office. And so it was kind of
15 a dual management type of thing where we -- we
16 supervised everybody.

17 Q. Would you have said that John Swallow, when
18 he took the position, took more of the role with
19 respect to the civil side and you took the criminal
20 side?

21 A. I think he probably was a little more
22 territorial.

23 Q. And so when you say he was "territorial,"
24 are you telling me that he had certain individuals that
25 he felt like he was in charge of supervising?

1 A. Yeah, that's fair.

2 Q. And that you had other people that you were
3 in charge of supervising?

4 A. That's probably accurate, yeah.

5 Q. And so during that period of time, do you
6 think it's fair for you to say that you actually
7 supervised all 210 attorneys?

8 A. I -- I still think that with respect to the
9 way it was under Mark Shurtleff, I felt responsible for
10 all of them. It might have been in a dual role, but
11 that's -- that's the way I think Mark Shurtleff would
12 have described it. Did John Swallow have some dual
13 responsibility? Yes.

14 Q. But you said he was also territorial,
15 correct? And I would imagine --

16 A. There were many times where I was doing all
17 kinds of chief deputy work in areas that he also was
18 doing chief deputy work, so I --

19 Q. So you would stand by the fact that you
20 claim that you supervised all 210 attorneys?

21 A. I supervised an awful lot of attorneys in
22 the AG's office. Let me put it that way.

23 Q. You also state here that you had "direct
24 supervision of all legal decisions within the office."
25 Do you stand by that statement?

1 A. I do.

2 Q. So even when John Swallow was in his
3 position, also as a dual chief deputy attorney general,
4 and you've already testified under oath that he was
5 territorial, is it your --

6 A. It was ultimately Mark Shurtleff who had
7 the ultimate decision. It was really a team effort.
8 And we sat down as a team and saw -- when those legal
9 issues were discussed, I was in the room. Ultimately,
10 it was Mark Shurtleff who got to make the decision.

11 Q. We've talked about how you were placed on
12 paid administrative leave from your position with the
13 attorney general's office. Can you explain to me when
14 you -- or how you were informed that you were being put
15 on paid administrative leave?

16 MS. MARCY: I'm going to make the same
17 objections as before, prejudicial, argumentative, not
18 relevant --

19 THE WITNESS: How I was --

20 MS. MARCY: Just a minute.

21 THE WITNESS: I'm sorry.

22 MS. MARCY: -- and asked to annoy,
23 embarrass and oppress. Go ahead.

24 THE WITNESS: How I was informed?

25 Q. (BY MR. HAMILTON) Yes. First of all,

1 let's start with who informed you that you were being
2 put on paid administrative leave?

3 A. The then chief deputy, Spencer Austin.

4 Q. Do you recall when that was?

5 A. April of, I guess, 2014.

6 Q. So when we are looking here at your CV, is
7 that when you would say that your time as the chief
8 deputy ended?

9 A. Yeah. It certainly had ended at that
10 point.

11 Q. Prior to that, had -- had you already been
12 demoted?

13 A. I had not been demoted.

14 Q. Had you been -- had the title of chief
15 deputy been removed?

16 A. Yes.

17 Q. And had Spencer Austin taken that role?

18 A. He had.

19 Q. Do you recall when that was?

20 A. January of 2014, I think.

21 Q. So, again, wouldn't that be when you --

22 A. Yeah.

23 Q. -- no longer were the chief deputy?

24 A. Yeah. If you're pointing out, you know,
25 that the resumé could have been a little more clear on

1 that, that's fair.

2 Q. Okay. So in January of 2014, Spencer
3 Austin becomes the chief deputy. What was your title
4 at that point in time?

5 A. It never -- the title never changed,
6 strangely enough. I guess assistant attorney general.

7 Q. Okay. What did your job description --
8 what was your job description at that point in time?

9 A. I didn't -- I didn't really have one.

10 Q. There was a transition taking place?

11 A. Yes.

12 Q. And so from January to April, you were kind
13 of in this transitional phase. Is that fair to say?

14 A. Yes.

15 Q. And then in April, you were informed that
16 you were being put on paid administrative leave?

17 A. Correct.

18 Q. Were you informed why you were being put on
19 paid administrative leave?

20 MS. MARCY: Same objections.

21 THE WITNESS: Yeah. It was pretty clear,
22 because the two former attorneys general were under
23 investigation, and the -- there was absolutely not a
24 concrete reason given to me for putting me on admin
25 leave, other than this investigation was going on with

1 respect to the former prior attorneys general.

2 Q. (BY MR. HAMILTON) Were you aware that you
3 were under investigation?

4 A. For what?

5 Q. Did you hire an attorney? Were you
6 concerned that you were under some type of criminal
7 investigation?

8 A. I don't consider that I've ever been under
9 criminal investigation.

10 Q. So you knew about the criminal
11 investigation involving --

12 A. I did.

13 Q. -- Mark Shurtleff --

14 A. I did.

15 Q. -- and John Swallow? My question to you
16 was, were you concerned that you were under criminal
17 investigation and hired an attorney?

18 MS. MARCY: Objection.

19 THE WITNESS: I did not hire an attorney.

20 MS. MARCY: Wait a minute. Wait a minute.
21 Objection. Asked and answered. And I'm just going to
22 make standing objections about all of this line of
23 questioning as well.

24 Q. (BY MR. HAMILTON) So it's your testimony
25 that you never hired Brett Tolman to represent you?

1 A. Brett Tolman represented me. I never hired
2 him to represent me. He was my lawyer. We can put it
3 that way.

4 Q. As far as you were concerned, you were
5 never being investigated for deleting a large portion
6 of e-mails from your e-mail account?

7 A. No.

8 Q. So you never had any concerns that you were
9 being criminally investigated for intentionally
10 deleting e-mails specifically regarding Marc Sessions
11 Jenson?

12 A. I didn't -- no.

13 Q. And you said that you never hired Brett
14 Tolman, but he represented you. You would agree with
15 that?

16 A. He did represent me, yes.

17 Q. And what was your understanding of why he
18 was representing you?

19 A. I obviously knew that my two former bosses
20 were under a major investigation, and I knew that there
21 was stuff going on. He and I were good friends, and he
22 basically said, you know, "Let's" -- "Let's be smart
23 about this and go through it together."

24 Q. Did you approach him about representing you
25 or did he approach you?

1 A. I don't recall. I think we had a friendly
2 conversation about -- I'd talked to Brett Tolman about
3 issues I had with Mark Shurtleff and John Swallow,
4 because we were friends, and it just sort of
5 naturally...

6 Q. You wouldn't quibble with me that you had
7 Mr. Tolman make statements for you to the press or that
8 he made statements on your behalf to the press, true?

9 A. True.

10 Q. And I just want to make sure your testimony
11 is clear today. Is your testimony that you were never
12 concerned that you were being investigated for deleting
13 e-mails?

14 MS. MARCY: Objection. Asked and answered.

15 THE WITNESS: That issue came up in an
16 audit that was done by the legislature. It happened
17 years ago, so I really wasn't concerned that I was
18 being investigated for that, no.

19 Q. (BY MR. HAMILTON) But you were aware that
20 there was an allegation that was made, or a discovery
21 made, that you had directed a secretary to go to your
22 office during the Christmas break of 2010 and '11 to
23 delete e-mails?

24 A. That happened, understanding that we all
25 felt like that there was a repository or a place where

1 the e-mails went. And so really there was no issue
2 with -- we didn't believe that they just went away. It
3 was just getting them off of the -- the computer.

4 Q. And that there was an audit that had
5 uncovered that that had happened and was critical of
6 you for that, true?

7 A. I don't know if it was critical of me. It
8 pointed it out in the audit.

9 Q. But you had no concern that you were also
10 going to be investigated criminally for that?

11 MS. MARCY: Objection. Asked and answered.

12 THE WITNESS: I've answered it.

13 Q. (BY MR. HAMILTON) Earlier, I asked you
14 some specific questions about whether you had ever
15 violated policy. Do you remember that? Or had an
16 accusation made against you that you had violated
17 policy? Do you remember that? Me asking you that
18 question?

19 A. An accusation that I violated policy?

20 Q. Yes. Earlier, I asked you the question,
21 and you stated that you had never personally been
22 accused of not following policy. Do you remember that?

23 A. I don't recall being asked that, no.

24 Q. Is that true?

25 A. That I had been accused of violating

1 policy?

2 Q. Yeah, you personally.

3 MS. MARCY: Same --

4 THE WITNESS: Accused --

5 MS. MARCY: Same standing objections for
6 this line of questioning as well.

7 THE WITNESS: Would you like to refine what
8 you mean by "accused"? Did somebody make an
9 allegation? What?

10 Q. (BY MR. HAMILTON) That's usually what
11 accused means, that someone made an allegation that you
12 didn't follow policy.

13 A. Somebody brought up an issue with respect
14 to a state car that I had, that I was responsible for.
15 Didn't -- there wasn't an investigation. There was a
16 committee formed to look at the issue as to whether
17 that was appropriate and found that it was; that there
18 was absolutely no violations of state policy. The
19 question was raised as to whether or not I should be
20 driving a state vehicle.

21 Q. Were you aware that the state auditor, John
22 Dougall, said that "Of all the cases, Torgensen seems
23 to be ignoring policy and state statutes the most and
24 was the most egregious in the office"?

25 A. That's completely 100 percent wrong.

1 Q. When you say it's wrong --

2 A. I didn't violate any policy. There was
3 no --

4 Q. Are you -- okay. Let me back up. Are you
5 saying that John Dougall never said that, the state
6 auditor never said that?

7 A. I don't know what he said, but he didn't --
8 I don't know to what degree -- nobody ever presented me
9 with any findings. In fact, I think the newspaper
10 article was wrong with respect to that. There was
11 another individual in the AG's office who was found to
12 be in violation of policy, and that wasn't me. And I
13 think that that was a wrong statement attributed by --
14 by Dougall to the -- a statement, by the way, which I
15 called the reporter for the Tribune and clarified.

16 Q. So when you say "wrong," you're saying that
17 your understanding is that John Dougall, the state
18 auditor, never said that?

19 A. I don't know what he said. What I'm saying
20 is that the statement is wrong. The audit -- and you
21 can go and read the audit for yourself. The audit
22 found that there was one person who was not entitled to
23 a state vehicle, and that was not me.

24 Q. I'd like you to look at Exhibit-2, and if
25 you'll flip to the second page of Exhibit-2, are you